

Montana Water Court
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FILED
01/03/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0009-R-2022
White, Eugene
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)

* * * * *

CLAIMANT: LF Ranch MT LLC

OBJECTOR: LF Ranch MT LLC

CASE 41K-0009-R-2022

41K 96258-00

41K 30131664

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41K 96258-00 received a self-objection from LF Ranch MT LLC (“LF Ranch”), and both claims received issue remarks during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0009-R-2022 to resolve the self-objection and issue remarks.

FINDINGS OF FACT

1. Claim 41K 96258-00 received a self-objection from LF Ranch MT LLC regarding the place of use and maximum acres elements. Claim 41K 30131664 received an issue remark stating that the claim was not included in the preliminary decree. On July 19, 2022, the Court consolidated the claims and set a filing deadline for LF Ranch to file any additional information or evidence addressing and resolving the self-objection

2. On August 8, 2022, LF Ranch filed a *Notice of Filing* stating that the place of use for claim 41K 96258-00 required modification in order to conform to historical usage. Attached to the *Notice of Filing* is a memo from DMS Natural resources stating that it appears from the map found in the Statement of Claim, and included with the *Notice of Filing*, the claimant inadvertently omitted listing the sections of the ditch in the SESWNE and S2SW of Section 24, Twp 20N, Rge 8W. Specifically, LF Ranch states that the Court’s acceptance of the following modification would resolve the self-objection for claim 41K 96258-00. The modifications proposed include:

Additional Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qrt Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
13			SESWNE	24	20N	8W	Lewis & Clark
14			S2SW	24	20N	8W	Lewis & Clark

3. Claim 41K 30131664 received a notice-type issue remark stating that the claim was not included in the preliminary decree, and claim 41K 96258-00 received a notice-type issue remark stating that the ditch name was modified by the DNRC during its claims reexamination.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. Based on the information contained in LF Ranch’s *Response*, along with the information contained in the DMS memo, the evidence shows by a preponderance of

evidence that the place of use for claim 41K 96258-00 should be modified as described in Finding of Fact No. 2. These modifications resolve the self-objection for claim 41K 96258-00.

2. The notice-type issue remarks appearing on claim 41K 30131664 and claim 41K 96258-00 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 96258-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LF RANCH MT LLC
PO BOX 6196
DENVER, CO 80206 0196

***Priority Date:** APRIL 30, 1952

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SMITH CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	4	19N	8W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: NILAN SUPPLY CANAL

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	4	19N	8W	LEWIS AND CLARK
2			SESWSW	18	20N	7W	LEWIS AND CLARK
3			N2	19	20N	7W	LEWIS AND CLARK
4			S2NW	20	20N	7W	LEWIS AND CLARK
5			N2N2SW	20	20N	7W	LEWIS AND CLARK
6			E2NE	24	20N	8W	LEWIS AND CLARK
7			W2NW	25	20N	8W	LEWIS AND CLARK
8			W2SWSW	25	20N	8W	LEWIS AND CLARK
9				26	20N	8W	LEWIS AND CLARK
10			SESE	33	20N	8W	LEWIS AND CLARK
11				34	20N	8W	LEWIS AND CLARK
12			N2N2	35	20N	8W	LEWIS AND CLARK
13			SESWNE	24	20N	8W	LEWIS AND CLARK

14

S2SW

24

20N

8W

LEWIS AND CLARK

Remarks:

THE USE OF THIS CLAIM IS REFERENCED IN A WARRANTY DEED (BOOK 164, PAGES 45-46), A RIGHT OF WAY EASEMENT DEED (BOOK 164, PAGES 47-50), AND AN AGREEMENT, ALL DATED APRIL 16, 1951; AND AN EASEMENT DATED DECEMBER 6, 1965 (BOOK 242, PAGES 579-582), RECORDS OF THE CLERK AND RECORDER OF LEWIS & CLARK COUNTY.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 30131664 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LF RANCH MT LLC
PO BOX 6196
DENVER, CO 80206 0196

Priority Date: JANUARY 1, 1868

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SMITH CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF SMITH CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	5	19N	7W	LEWIS AND CLARK
Source Name: UNNAMED TRIBUTARY OF SMITH CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		N2NE	6	19N	7W	LEWIS AND CLARK
Source Name: SMITH CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		N2NENW	6	19N	7W	LEWIS AND CLARK
Source Name: SMITH CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4		N2NWNW	6	19N	7W	LEWIS AND CLARK
Source Name: SMITH CREEK						
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNE	5	19N	7W	LEWIS AND CLARK
2			N2NE	6	19N	7W	LEWIS AND CLARK
3			N2NENW	6	19N	7W	LEWIS AND CLARK
4			N2NWNW	6	19N	7W	LEWIS AND CLARK
5			N2S2SE	32	20N	7W	LEWIS AND CLARK
6			S2SESW	32	20N	7W	LEWIS AND CLARK
7			S2SWSW	32	20N	7W	LEWIS AND CLARK